

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
Wheeling**

JOHN DANE,

Petitioner,

v.

Civil Action No. 5:24-CV-157
Judge Bailey

MELISSA BAYLESS,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

The above referenced case is before this Court upon the magistrate judge's recommendation that Respondent's Motion to Dismiss or, in the Alternative, for Summary Judgment [Doc. 11] be granted and petitioner's petition be denied and dismissed with prejudice.

This Court is charged with conducting a *de novo* review of any portion of the magistrate judge's report to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that report. 28 U.S.C. § 636(b)(1). However, absent prompt objection by a dissatisfied party, it appears that Congress did not intend for the district court to review the factual and legal conclusions of the magistrate judge. *Thomas v. Arn*, 474 U.S. 140 (1985). Additionally, any party who fails to file timely, written objections to the magistrate judge's report pursuant to 28 U.S.C. § 636(b)(1) waives the right to raise those objections at the appellate court

level. **United States v. Schronce**, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984). No objections have been filed to the magistrate judge's report and recommendation.¹

A *de novo* review of the record indicates that the magistrate judge's report accurately summarizes this case and the applicable law. Accordingly, Magistrate Judge Mazzone's Report and Recommendation [Doc. 17] is **ADOPTED**. Respondent's Motion to Dismiss, or in the Alternative, for Summary Judgment [Doc. 11] is **GRANTED**. Petitioner's Petition [Doc. 1] is **DENIED** and **DISMISSED WITH PREJUDICE**. The Clerk is **DIRECTED TO STRIKE** the above-styled case from the active docket of this Court.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record herein and to the *pro se* petitioner by certified mail, return receipt requested, to his last known address as reflected on the docket sheet.

DATED: December 17, 2024.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE

¹ Pursuant to the R&R, petitioner "shall have **fourteen (14) days** from the date of service of this Report and Recommendation within which to file with the Clerk of this Court, **specific written objections, identifying the portions of the Report and Recommendation to which objection is made, and the basis of such objection.**" See [Doc. 17 at 10 (emphasis in original)].

Service of the R&R was accepted on November 22, 2024. See [Doc. 18]. November 22, 2024, was twenty-five (25) days ago. Thus, this Court did not just wait the standard fourteen (14) days—this Court waited an additional eleven (11) days before ruling on the pending R&R.